

ESTRIN, BENN & LANE, LLC
Attorneys for the Defendants
JCJ BAKERY CORPORATION and
CHARLIE NICOSIA
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMON BERNARD, Individually and on
Behalf of All Other Persons Similarly Situated, 08 CV 03808 (LAK)

Plaintiff, ANSWER

- against -

JCJ BAKERY COPRORATION, CHARLIE
NICOSIA and JOHN DOES #1-10,

Defendants.

Defendants, JCJ Bakery Corporation ("JCJ") and Charlie Nicosia (collectively the "Answering Defendants" or "Defendants"), by their attorneys, Estrin, Benn & Lane, LLC, as and for an answer to the complaint allege as follows:

1. The Defendants admit the allegations contained in paragraphs "7" and "8".
2. The Defendants deny knowledge and information to form a belief as to the allegations contained in paragraphs "3", "4", "5", "6", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "30", "31", "32", "33", "40", and "42" of the Complaint of the Plaintiff.
3. The Defendants deny the allegations contained in paragraphs "1", "2", "34", "35", "36", "37", "38", "41", and "43" of the Complaint of the Plaintiff.

4. The Defendants make the same admissions and denials respecting the allegations in each of the paragraphs referred to in paragraph "29" and "39" of the Complaint of the Plaintiff.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

5. The Plaintiff has failed to mitigate his damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

6. The Defendants have paid all amounts due and owing to the Plaintiff.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

7. The Defendant, Charlie Nicosia, is an improper party to this action.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

8. The Plaintiff, Ramon Bernard, was employed pursuant to 29 USC § 213 (a) (1) and is thus barred from maintaining the within action.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

9. This Court lacks subject matter jurisdiction over the Plaintiff's claims under the New York Labor Law.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

10. The Plaintiff's claim is barred by the Statute of Limitations under 29 USC § 255 and under New York Labor Law § 663 (3).

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

11. The Plaintiff, Ramon Bernard, was employed pursuant to 12 NYCRR § 142-2.14.

WHEREFORE, the Answering Defendants demand judgment against the Plaintiff dismissing the Complaint in its entirety action.

JURY DEMAND

Pursuant to Fed.R.Civ.P. 38(b), the defendants demand a trial by jury.

ESTRIN, BENN & LANE, LLC

By: S/
Melvyn J. Estrin (MJE-9897)

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